

Public Chapter 483

HOUSE BILL NO. 1264

By Representatives McAfee, Davis, Haley, Fitzhugh, Pleasant, McDaniel, Stamps, Walley, Ford, Wood, Patton, Kerr, Beavers, Kent, Bird, Clabough, McKee, Sargent, Newton, Scroggs, Godsey, Halteman Harwell, Goins, Walker, Mumpower, Boyer, Roach, Bittle

Substituted for: Senate Bill No. 1671

By Senators Gilbert, Williams, Elsea, McNally, Atchley, Person, Koella, Haun, Carter, Ramsey, Leatherwood, Miller, Fowler

AN ACT to create a drinking water revolving loan program and to amend Part 10 of Chapter 221 of Title 68.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Part 10 of Chapter 221 of Title 68 is amended by adding sections 2 through 8 as appropriately designated sections.

SECTION 2. Short title. This act may be cited as the "Drinking Water Revolving Loan Fund Act of 1997."

SECTION 3. Purpose and intent.

(a) The purpose of this act is to:

(1) Facilitate statewide compliance with state and federal drinking water standards;

(2) Provide Tennessee water systems with low-cost loans and other financial assistance for system improvements through the creation of a self-sustaining revolving loan program so as to improve drinking water systems; and

(3) Enable the Department to receive and use federal funds for the loan program and other purposes, including but not limited to technical assistance, authorized by the federal act.

(b) It is intended that the drinking water revolving loan program be used in coordination with state and federal assistance programs.

SECTION 4. Definitions. Terms used in this act that are defined in T.C.A. §68-221-703 and §68-221-1003 shall have the same meaning herein. As used in this part, unless the context otherwise requires:

(a) "Federal act" means the Safe Drinking Water Act, or Title XIV of the Public Health Service Act, 42 U.S.C. §§ 300f et seq., as amended, and rules and regulations promulgated thereunder;

(b) "Fund" means the water system revolving loan fund;

(c) "Loan" means loans, loan guarantees, or a source of reserve and security for leveraged loans.

(d) "Security" means that which is determined by the authority to be acceptable to secure a loan to a water system under this part and includes, but is not limited to, dedicated or other revenues of the system, collateral, letters of credit, and surety bonds;

(e) "State act" means the Tennessee Safe Drinking Water Act of 1983, T.C.A. §§68-221-701 et seq., as amended, and rules and regulations promulgated thereunder;

(f) "System" "and "water system" means community public water systems of counties, municipalities, and utility districts formed pursuant to Chapter 82 of Title 7.

SECTION 5. Drinking water revolving loan fund.

(a)(1) There is created in the state treasury a revolving loan fund to be known as the "Drinking water revolving loan fund."

(2) The authority shall administer the fund and may adopt rules and regulations for such administration.

(3) All interest and earnings of the fund shall remain a part of the fund.

(4) No part of the fund shall revert to the general fund on any June 30, but shall remain a part of the revolving fund available for expenditure in accordance with the provisions of this part.

(b)(1) The authority shall deposit in the fund all receipts from the repayment of principal and interest on loans made pursuant to this part.

(2) The fund shall be established, maintained and credited with repayments, and the fund balance shall be available in perpetuity for providing such loans, pursuant to this act.

(c) The department shall deposit in the fund federal funds allocated to the state pursuant to the federal act which have been determined by the department to be for the purpose of making loans to water systems and for which state matching funds are available.

(d)(1) The department shall recommend annually to the General Assembly the appropriate state funds necessary for the receipt of all available matching federal funds.

(2) State money appropriated to the department or to the authority to carry out the provisions of this part may be used, in addition to other purposes, to match federal funds allocated to the state pursuant to the Safe Drinking Water Act for the purpose of making loans to water systems.

SECTION 6. Program for loans, financing and refinancing — Powers of department and authority — Priority system and list — Intended use plan — Audit. —

(a) The department in conjunction with the authority shall administer a program for loans to water systems and the department may adopt regulations to govern the application procedure for loans under this act as well as to effectuate the purposes of this act.

(b) The department shall recommend to the authority an appropriate financing method for each water system which has applied for financial assistance under this part and which appears on the drinking water priority list established under this section. In recommending the interest rate for a loan, the department shall utilize the affordability criteria developed pursuant to this section. Water systems serving jurisdictions falling within the lower economic scale on the index shall be eligible for lower interest rates.

(c) Priority system. The Department shall, after notice and opportunity for public comment, establish a priority system for loans under this act that to the maximum extent practicable, gives priority for the use of funds to projects that:

(1) address the most serious risk to human health;

(2) are necessary to ensure compliance with the requirements of the federal and state acts (including requirements for filtration); and

(3) assist systems most in need on a per household basis according to State affordability criteria.

(d) Priority list. The Department shall, after notice and opportunity for public comment, publish and periodically update a list of projects in the State that are eligible for assistance under this act, including the priority assigned to each project.

(e) The Department shall, after notice and opportunity for public comment, establish affordability criteria for loans under this program which shall utilize an economic index based on factors which include, but are not limited to, per capita income and property values of the jurisdiction to be served.

(f) After providing for public review and comment, the Department shall annually prepare a plan that identifies the intended uses of the amounts available to the fund. An intended use plan shall include:

(1) a list of the projects to be assisted in the first fiscal year that begins after the date of the plan, including a description of the project, the expected terms and schedule of financial assistance, and the size of the community served;

(2) the criteria and methods established for the distribution of funds, including the priority system; and

(3) a description of the financial status of the fund and the short-term and long-term goals of the fund.

(g) The department shall present to the authority its recommendations for loans to water systems. Prior to making a recommendation for loans to water systems, the department may ensure through an environmental review that loan funded projects shall be environmentally sound. The authority shall have final

approval of such loans. Both the department and the authority shall be parties to the contracts with water systems concerning loans.

(h) The Comptroller of the Treasury shall make an annual audit of the fund as part of the comptroller's annual audit of the authority and the department pursuant to §9-3-211.

(i) The authority and the department shall have such other authority as may be necessary and appropriate for the exercise of the powers and duties conferred by this part.

(j) Notwithstanding any other provision of this part to the contrary, the department, in conjunction with the authority, may develop alternative financial assistance programs, which may include the issuance of the authority's revenue bonds, for water systems using the funds appropriated herein to effect the legislative intent of providing low-cost financial assistance to water systems, provided such programs are permissible under the federal act.

(k) Water systems having the powers discussed in T.C.A. §68-221-1005(g), (h), and (i), may use such powers in the manner stated therein in relation to projects receiving loans under this act.

SECTION 7. Prerequisites for and terms of loans. —

(a) Loans shall be made only to water systems that:

(1) Are on the department's water system priority ranking list established pursuant to section 6 of this act;

(2) Use the funds only for expenditures that will facilitate compliance with the federal act and the state act or otherwise significantly further the public health protection objectives of those acts;

(3) In the opinion of the authority, demonstrate technical, managerial, and financial capability to ensure compliance with the requirements of the federal act and the state act; provided however, that systems without such current capability may receive loans if the owner or operator of the system agrees to undertake feasible and appropriate changes in operations as approved by the water and wastewater financing board (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of the state and federal acts over the long term;

(4) Are not in significant noncompliance with the federal act or the State act unless the use of the assistance will ensure compliance;

(5) Establish a dedicated source or sources of revenue and demonstrate adequate security for the repayment of the loan;

(6) Agree to adjust periodically fees and charges for services of the water system in order that loan payments and costs of the water system are timely paid;

(7) Agree to maintain financial records in accordance with governmental accounting standards and to conduct an annual audit of the system's financial records, if applicable; and

(8) Provide such assurances as are reasonably requested by the authority and the department.

(b) Loan funds may not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this section and the purchase is from a willing seller.

(c) Of the amount credited to the fund in any fiscal year, 15 percent shall be available solely for providing loan assistance to water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of water systems.

(d) The interest rate for each loan shall be less than or equal to the market interest rate, or the loan may be interest free.

(e) Principal and interest payments on each loan will commence not later than one (1) year after completion of the project for which the loan was made, and each loan will be fully amortized not later than twenty (20) years after the completion of the project, except that in the case of a disadvantaged community (as defined in subsection (i)(2)), the authority may provide an extended term for a loan, if the extended term:

(1) terminates not later than thirty (30) years after the date of project completion; and

(2) does not exceed the expected design life of the project.

(f) The drinking water revolving loan fund may also be used:

(1) to buy or refinance the debt obligation of a municipality or an inter-municipal or interstate agency at an interest rate that is less than or equal to the market interest rate if the debt obligation was incurred after July 1, 1993;

(2) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

(3) as a source of revenue or security for the payment of principal and interest on debt of the authority, if the proceeds of the sale of the bonds will be deposited into the fund;

(4) to earn interest on the amounts deposited into the fund;

(5) for loans to any systems to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations;

(6) for loans to any water system to implement local, voluntary source water protection measures to protect source water in areas

delineated pursuant to section 1453 of the federal act, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 of the federal act or otherwise significantly further the health protection objectives of this title. Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms;

(7) for loans to any water system to provide funding in accordance with section 1454(a)(1)(B)(i) of the federal act;

(8) to provide assistance, including technical and financial assistance, to any water system as part of a capacity development strategy developed and implemented in accordance with section 1420(c) of the federal act;

(9) to make expenditures from the capitalization grant for fiscal years 1996 and 1997 to delineate and assess source water protection areas for water systems in accordance with section 1453 of the federal act, except that funds set aside for such expenditure shall be obligated within 4 fiscal years;

(10) to make expenditures from the fund for the establishment and implementation of wellhead protection programs for water systems under section 1428 of the federal act;

(g) Loan funds may only be used for expenditures approved by the department.

(h) The requirements of this section applicable to water systems applying for loans are deemed satisfied if any one of the entities jointly participating in the project being funded pursuant to the loan agreement satisfies the requirements.

(i) Loan subsidy. Notwithstanding any other provision of this act, in any case in which the State makes a loan pursuant to this act to a water system serving a disadvantaged community or a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).

(1) Total amount of subsidies.--For each fiscal year, the total amount of loan subsidies may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.

(2) Definition of disadvantaged community.--In this subsection, the term 'disadvantaged community' means the service area of a water system that meets affordability criteria established pursuant to this act.

SECTION 8. The failure or inability of any public water system to receive funds under this section or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of the State act.

SECTION 9. T.C.A. Section 68-221-1007 is amended by adding the words, "water systems and" before the words, "wastewater facilities" wherever they occur and is further amended by adding the words "water and" before the words, "wastewater financing".

SECTION 10. T.C.A. Section 68-221-1008 is amended by adding the words “water systems and” before the words “wastewater facilities” in each place they occur.

SECTION 11. T.C.A. Section 68-221-1008(a)(1) is further amended by adding the words “water and” before the words “wastewater financing board”.

SECTION 12. T.C.A. Section 68-221-1008(b)(6) is further amended by deleting the words “Manufacturers’ and Taxpayers” and adding the words “of Business” after the word, “Association”.

SECTION 13. T.C.A. Section 68-221-1008(f) is amended by adding the words “water system or” before the words “wastewater facility”.

SECTION 14. T.C.A. Section 68-221-1009(a) is amended by adding the words “water systems and” before the words “wastewater facilities” in each place they occur.

SECTION 15. T.C.A. Section 68-221-1009(a) is further amended by adding the following as an appropriately designated subsection:

() In the case of public water systems, investigate, with the assistance of the Department and the Comptroller, and determine the financial, technical, and managerial capacity of the systems to comply with the requirements of the federal and state acts; and to require systems to take appropriate action to correct any deficiencies in such areas, including but not limited to changes in ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures. The board also may approve or disapprove such corrections as a condition for the receipt of assistance under section 7(a)(3) of this act.

SECTION 16. T.C.A. Section 68-221-1010 is amended by adding the words “water system or” before the words “wastewater facility” in each place they occur in the first sentence of subsection (a)(1) and in subsections (b) and (c).

SECTION 17. T.C.A. Section 68-221-1010 is further amended by deleting the final sentence of subsection (a)(1).

SECTION 18. T.C.A. Section 68-221-1011 is amended by adding the words “water systems and” before the words “wastewater facilities” in each place they occur and by adding the words “water system or” before the words “wastewater facility” in each place they occur.

SECTION 19. T.C.A. Section 68-221-1012 is amended by adding the words “water systems and” before the words “wastewater facilities”.

SECTION 20. T.C.A. Section 68-221-1015 is amended by adding the words “water systems and” before the words “wastewater facilities” and is further amended by adding the following as an appropriately designated subsection:

() The board may defer to the utility management review board created by T.C.A. §7-82-701 in regard to matters concerning utility districts that fall under the jurisdiction of both boards.

() The board shall enter into a memorandum of understanding with the utility management review board describing how water systems will be divided

between the two boards, which shall be given to the U.S. Environmental Protection Agency as part of the program submittal.

SECTION 21. No expenditure of public funds pursuant to this act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 United States Code 2000d.

SECTION 22. Tennessee Code Annotated, Section 68-221-1008(b), is further amended by adding the following an appropriately designated subsection:

() One (1) member appointed by the Governor, who is an active employee of a municipal water utility and one (1) member who is an active employee of a water utility district. The Governor shall consult with the president of the Tennessee Association of Utility Districts to determine qualified persons to fill these appointments;

SECTION 23. Notwithstanding any provision of law to the contrary, the utility management review board shall have the authority, in the case of public water systems of utility districts, to investigate, with the assistance of the Department and the Comptroller, and determine the financial, technical, and managerial capacity of the systems to comply with the requirements of the federal and the state acts; and to require systems to take appropriate action to correct any deficiencies in such areas, including but not limited to changes in ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures. The utility management review board also may approve or disapprove such corrections as a condition for any public water system of a utility district to receive assistance from the authority under Section 7(a)(3) of this act.

SECTION 24. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 25. This act shall take effect upon becoming a law, the public welfare requiring it.